

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

FILED

2016 AUG 18 AM 11: 23

STATE OF WEST VIRGINIA,  
ex rel. PATRICK MORRISEY,  
Attorney General,

Plaintiff/Petitioner,

J. E. HOOD  
CIRCUIT CLERK  
CABELL CO. WV

v.

CIVIL ACTION NO. 16-C-538

/s/ F. JANE HUSTEAD

SHAWN DUNFEE, individually  
and doing business as DUNFEE'S USED CARS,

Defendant/Respondent.

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COMPLAINT AND PETITION FOR INJUNCTIVE RELIEF

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This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter "the Act"). Plaintiff/Petitioner, the State of West Virginia ex rel. Patrick Morrisey, Attorney General, (hereinafter "the State") has reason to believe the above-named Defendant/Respondent, Shawn Dunfee, individually and doing business as Dunfee's Used Cars, (hereinafter collectively referred to as "Dunfee") has violated the Act. The State brings this action to enjoin and restrain Dunfee from engaging in unfair or deceptive acts or practices in the sale of motor vehicles. The State seeks preliminary injunctive relief and other equitable relief including, but not limited to, restitution for consumers who were harmed by Dunfee's business practices, court costs, investigative costs, attorneys' fees, and penalties of \$5,000.00 for each violation of the Act.

## **I. PARTIES**

1. The Plaintiff, the State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General is authorized to bring this action pursuant to W. Va. Code §§ 46A-7-108, -110, and -111.

2. Shawn Dunfee is the sole proprietor of the unincorporated business known as Dunfee's Used Cars.

3. Shawn Dunfee is a resident of Cabell County, West Virginia.

4. Shawn Dunfee conducts business as Dunfee's Used Cars at 3338 U.S. Route 60 East, Huntington, Cabell County, West Virginia 25705.

## **II. JURISIDICITION AND VENUE**

5. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 7 of the West Virginia Constitution and W. Va. Code § 51-2-2.

6. Venue is proper in this Court pursuant to W. Va. Code §§ 46A-7-114 and 56-1-1.

## **III. FACTS COMMON TO ALL CAUSES OF ACTION**

7. Dunfee is a licensed dealer of used motor vehicles, as defined by W. Va. Code § 17A-6-1(a)(2) and, as such, it is subject to the provisions set forth in W. Va. Code § 17A-6-1 *et seq.*, as well as the West Virginia Legislative Rules for the Division of Motor Vehicles, 91 C.S.R. 6.

8. Dunfee engages in the sale and financing of used motor vehicles to consumers. As such, Dunfee's business practices are subject to the provisions set forth in the Act, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101 *et seq.*

9. Dunfee is a "merchant" as defined by W. Va. Code § 46-2-104(i) of the Uniform Commercial Code and as that term is used generally throughout the WVCCPA.

10. As a merchant engaged in the sale of used motor vehicles to consumers, Dunfee is subject to the provisions set forth in the FTC Used Motor Vehicle Trade Regulation Rule ("FTC Used Vehicle Rule"), 16 C.F.R. § 455, which requires car dealers to post a disclosure document called a Buyers Guide on the outside of all used vehicles that are offered for sale to notify consumers about the terms and conditions of the warranty, if any, on the vehicle.

11. As a merchant engaged in the sale or used motor vehicles to consumers, Dunfee may not exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, nor may it limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied on the vehicles that it sells. W. Va. Code § 46A-6-107.

12. A person or creditor that engages in repeated and willful violations of the Act is subject to a civil penalty of up to \$5,000.00 for each violation in accordance with W. Va. Code § 46A-7-111(2).

#### **IV. THE ATTORNEY GENERAL'S INVESTIGATION**

##### **Background facts**

13. In 2010, the State commenced an investigation of the business practices of Dunfee after receiving a number of complaints from consumers that Dunfee sold them used vehicles that failed to meet the implied warranty of merchantability and by also modifying and altering the warranty in violation of the Act.

14. The Attorney General's Office investigated Dunfee's business practices to determine if it was violating the Act.

15. On September 30, 2010, Dunfee entered into an Assurance of Discontinuance with the West Virginia Attorney General's office agreeing to modify its contracts and to comply

with the Act. A copy of this Assurance of Discontinuance is attached hereto and incorporated by reference herein as Exhibit 1.

16. Dunfee failed to comply with the terms of the September 30, 2010 Assurance.

17. In March of 2015, another investigation commenced, due to Dunfee's violations of the Act by selling vehicles that did not meet the implied warranty of merchantability, and modifying and altering the warranty in violation of the Act.

18. On November 21, 2015, Dunfee entered into a second Assurance of Discontinuance with the West Virginia Attorney General's office, agreeing to modify its contracts to comply with the Act. A copy of this Assurance of Discontinuance is attached hereto and incorporated by reference herein as Exhibit 2.

19. Dunfee failed to comply with the terms of the November 21, 2015 assurance.

20. On May 15, 2016, the State re-opened its investigation into Dunfee's business practices after receiving a new complaint that Dunfee sold a consumer a used vehicle that did not meet the implied warranty of merchantability, and had modified or altered the warranty in violation of the Act.

21. West Virginia Code § 46A-7-107 provides that while an assurance of discontinuance is not an admission of violation "except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to such assurance he engaged in the conduct described in such assurance."

22. Dunfee's failure to comply with the terms of the two assurances is to be considered proof of prior bad conduct in his sale of motor vehicles.

23. Dunfee's continued bad acts constitute willful and repeated violations of the WVCCPA. W. Va. Code § 46A-7-111(2).



**FIRST CAUSE OF ACTION**  
**(Dunfee Excluded, Modified or Attempted to Limit the Implied Warranty of**  
**Merchantability)**

24. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

25. As a merchant engaged in the sale of used motor vehicles to consumers, Dunfee may not exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, nor may it limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied, on any vehicle it sells. W. Va. Code § 46A-6-107.

26. Dunfee modified or excluded warranties on the vehicles it sold at all times pertinent hereto as alleged in this Complaint, in violation of W. Va. Code § 46A-6-107 and W. Va. Code § 46A-6-104.

27. Dunfee misled consumers about its obligation to provide vehicles that are merchantable and its responsibility to repair all mechanical defects that fall within the implied warranty of merchantability at all times pertinent hereto as alleged in this Complaint, in violation of W. Va. Code § 46A-6-107 and W. Va. Code § 46A-6-104, as defined by W. Va. Code § 46A-6-102(f)(12)(13).

**SECOND CAUSE OF ACTION**  
**(Dunfee Sold Vehicles That Were Not Merchantable)**

28. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

29. As a merchant engaged in the sale of used motor vehicles to consumers, Dunfee may not exclude or modify warranties or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, nor

may it limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied, on the vehicles it sells. W. Va. Code § 46A-6-107.

30. Dunfee sold vehicles that were unsafe and did not pass a West Virginia motor vehicle safety inspection at certain times pertinent hereto and as alleged in this Complaint.

31. Vehicles that cannot pass a state motor vehicle inspection are not merchantable because they cannot legally be driven on public highways.

32. Selling vehicles that are not merchantable violates W. Va. Code § 46A-6-107 and W. Va. Code § 46A-6-104.

**THIRD CAUSE OF ACTION  
(Dunfee Failed to Post Buyers Guides in the Manner and Form  
Required by Federal and State Law)**

33. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

34. As a merchant engaged in the sale of used motor vehicles to consumers, Dunfee is subject to the provisions set forth in the FTC Used Motor Vehicle Trade Regulation Rule ("FTC Used Vehicle Rule"), 16 C.F.R. § 455, which requires used car dealers to post a disclosure document called a Buyers Guide on the outside of all used vehicles that are offered for sale to notify consumers about the terms and conditions of the warranty, if any, on the vehicle.

35. Dunfee failed to post Buyers Guides on used motor vehicles it offers for sale to consumers in the manner and form required by the FTC Used Vehicle Rule at all times pertinent hereto and as alleged in this Complaint. In each instance where it failed to do so, it engaged in an unfair or deceptive act or practice, in violation of W. Va. Code § 46A-6-104.

### **PRAYER FOR RELIEF**

WHEREFORE, The State of West Virginia requests that this Court:

A. Conduct a hearing on this matter as soon as possible pursuant to W. Va. Code § 46A-7-110.

B. Grant an immediate preliminary injunction without bond pursuant to W. Va. Code § 46A-7-110 prohibiting the Defendant from transferring or conveying any real or personal property in their custody or control to any third party until this matter has been finally adjudicated.

C. Upon final hearing:

1. Enter judgment in favor of the State and against Defendants, ordering Defendants to pay restitution to all aggrieved consumers;

2. Enter judgment in favor of the State against Defendants and order Defendants to pay civil penalties to the State in the amount of five thousand dollars (\$5,000.00) for each and every willful and repeated violation of Chapter 46A of the West Virginia Code that they committed, as provided in W. Va. Code § 46A-7-111(2);

3. Enter judgment against and order Defendants to pay to the State all its attorneys' fees, court costs, investigation costs, and all other costs associated with the maintenance and prosecution of this action; and

4. Grant other and further relief as the Court deems just and appropriate.

Respectfully submitted:  
STATE OF WEST VIRGINIA,  
ex rel. PATRICK MORRISEY,  
ATTORNEY GENERAL

By Counsel

*Ann L. Haight* WVB #1527  
R. Stephen Jarrell (WV Bar No. 6787)  
Assistant Attorney General  
Office of the Attorney General of West Virginia  
Consumer Protection/Antitrust Division  
Post Office Box 1789  
Charleston, West Virginia 25326-1789  
Telephone: (304) 558-8986  
Facsimile: (304) 558-0184



BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA  
STATE CAPITOL  
CHARLESTON, WEST VIRGINIA

IN THE MATTER OF:

OCT 04 2010

SHAWN DUNFEE, d/b/a  
Dunfee's Used Cars  
3338 U.S. Route 60 East  
Huntington, Wv 25705

ASSURANCE OF DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Shawn Dunfee d/b/a Dunfee's Used Cars (Dunfee), which may be subject to an order by the Attorney General or by a court of law. In accordance with West Virginia Code § 46A-7-107, Dunfee, without in any way admitting that any of his prior practices were in violation of the West Virginia Consumer Credit and Protection Act, or other applicable state and federal laws, has consented to observe the following terms, conditions, and agreements in the future conduct of his business from and after the date of this Assurance of Discontinuance.

BACKGROUND AND APPLICABLE LAW

1. Shawn Dunfee is the owner of Dunfee's Used Cars, a used car dealership located at 3338 U.S. Route 60 East, Huntington, West Virginia. Dunfee is a licensed dealer of used motor vehicles.
2. Dunfee engages in the sale of used motor vehicles to consumers. As such, Dunfee business practices are subject to the provisions set forth in the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 *et seq.*, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101 *et seq.*

3. Dunfee is a "merchant" as defined by W. Va. Code § 46-2-104(i) of the Uniform Commercial Code and as that term is used generally throughout the WVCCPA.

4. A person or creditor that engages in repeated and willful violations of the WVCCPA is subject to a civil penalty of up to \$5,000.00 for each violation in accordance with W. Va. Code § 46A-7-111(2).

### **THE ATTORNEY GENERAL'S ALLEGATIONS**

5. The Attorney General commenced an investigation of Dunfee after receiving complaints alleging that it was engaging in unfair or deceptive acts or practices and other violations of the WVCCPA in connection with the sale and financing of used motor vehicles to consumers.

6. Based upon the allegations in the complaints, a review of pertinent sales documents and other records, and Dunfee's responses to these complaints, the Attorney General has determined that Dunfee engaged in practices which include, but are not limited to, disclaiming or attempting to disclaim the implied warranty of merchantability in violation of W. Va. Code § 46A-6-107(2).

### **AGREEMENT**

7. Without admitting that it has engaged in or committed any of the acts or violations as alleged herein, Dunfee hereby agrees modify his contracts to comply with the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*

8. Dunfee shall take such steps as may be necessary, including policy revision and modification or creation of new sales documents, to ensure compliance with the terms of this Assurance.

9. Dunfee further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of his business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization. It is agreed and understood that the contents of this Assurance are and shall be public information.

10. It is further agreed and understood that, while the parties to this Assurance presently intend to cooperate in securing and obtaining compliance with the terms of this Assurance, the matters settled by the filing of this agreement may not be reopened by the Attorney General of West Virginia except for the sole purpose of enforcing the specific terms of this Assurance.

IN WITNESS WHEREOF, Dunfee has caused this Assurance to be executed. The Attorney General of West Virginia or his designate has approved this Assurance.

9-30-10  
Date

DUNFEE'S USED CARS

BY: [Signature]  
SHAWN DUNFEE, OWNER

STATE OF WEST VIRGINIA,  
COUNTY OF cabell, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this  
30 day of Sept, 2010.

My commission expires 3-11-2012.



Debbie Talbert  
NOTARY PUBLIC

APPROVED BY:

JILL MILES  
DEPUTY ATTORNEY GENERAL

Jill Miles  
Consumer Protection/Antitrust Division

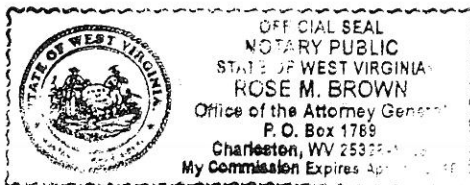
Dated: 9/22/10

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this  
22nd day of September, 2010

My commission expires 4/13/2016

Rose M. Brown  
NOTARY PUBLIC





BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA  
STATE CAPITOL  
CHARLESTON, WEST VIRGINIA

IN THE MATTER OF:

STACY S. DUNFEE, d/b/a  
Dunfee's Used Cars  
3338 U.S. Route 60 East  
Huntington, WV 25705

ASSURANCE OF DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has investigated certain acts and practices of Stacy S. Dunfee, d/b/a Dunfee's Used Cars (hereinafter "Dunfee"), which may be subject to an order by the Attorney General or by a court of law. In accordance with West Virginia Code § 46A-7-107, Dunfee, without in any way admitting that any of his prior practices were in violation of the West Virginia Consumer Credit and Protection Act, or other applicable state and federal laws, has consented to observe the following terms, conditions, and agreements in the future conduct of his business from and after the date of this Assurance of Discontinuance.

BACKGROUND AND APPLICABLE LAW

1. Stacy S. Dunfee is the owner of Dunfee's Used Cars, a used car dealership located at 3338 U.S. Route 60 East, Huntington, West Virginia. Dunfee is a licensed dealer of used motor vehicles.
2. Dunfee engages in the sale of used motor vehicles to consumers. As such, Dunfee's business practices are subject to the provisions set forth in the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 *et seq.*, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101 *et seq.*



3. Dunfee is a "merchant" as defined by W. Va. Code § 46-2-104(i) of the Uniform Commercial Code and as that term is used generally throughout the WVCCPA.

4. A person or creditor that engages in repeated and willful violations of the WVCCPA is subject to a civil penalty of up to \$5,000.00 for each violation in accordance with W. Va. Code § 46A-7-111(2).

### **THE ATTORNEY GENERAL'S ALLEGATIONS**

The Attorney General commenced an investigation of Dunfee after receiving complaints alleging that it was engaging in unfair or deceptive acts or practices and other violations of the WVCCPA in connection with the sale and financing of used motor vehicles to consumers.

Based upon the allegations in the complaints, a review of pertinent sales documents and other records, and Dunfee's responses to these complaints, the Attorney General has determined that Dunfee engaged in practices which include, but are not limited to, disclaiming or attempting to disclaim the implied warranty of merchantability in violation of W. Va. Code § 46A-6-107(2).

### **AGREEMENT**

Without admitting that it has engaged in or committed any of the acts or violations as alleged herein, Dunfee hereby agrees modify his contracts to comply with the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*

1. Dunfee shall take such steps as may be necessary, including policy revision and modification or creation of new sales documents, to ensure compliance with the implied warranty laws of the State of West Virginia.

2. Specifically, Dunfee agrees that in the event a vehicle he sells fails to operate properly and safely during his warranty period, which is currently 30 days from the date of sale, he will rescind the purchase agreement and return the purchaser's money.

3. Dunfee further promises to provide restitution in the amount of \$2,200.00 to Stacy Young. Dunfee shall forward a check made payable to Stacy Young in the aforesaid amount to the Attorney General's Consumer Protection Division at the time of the execution of this Assurance.

4. Dunfee shall pay as penalty to the State of West Virginia the sum of \$1,000.00. This sum shall be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers. This amount shall be paid January 2016.

5. Dunfee further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of his business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization.

6. It is agreed and understood that the contents of this Assurance are and shall be public information.

7. It is further agreed and understood that, while the parties to this Assurance presently intend to cooperate in securing and obtaining compliance with the terms of this Assurance, the matters settled by the filing of this agreement may not be reopened by the Attorney General of West Virginia except for the sole purpose of enforcing the specific terms of this Assurance.

IN WITNESS WHEREOF, Dunfee has caused this Assurance to be executed. The Attorney General of West Virginia or his designate has approved this Assurance.

12-9-2015  
Date

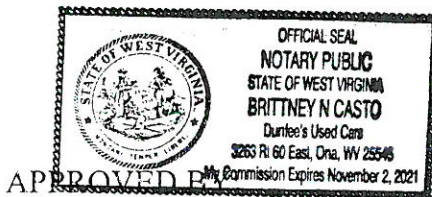
DUNFEE'S USED CARS

BY: Shawn S. Dunfee  
SHAWN S. DUNFEE, OWNER

STATE OF WEST VIRGINIA,  
COUNTY OF Cabell, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 9th day of Dec, 2015.

My commission expires 11-2-2021.



Brittney N. Casto  
NOTARY PUBLIC

R. STEPHEN JARRELL  
ASSISTANT ATTORNEY GENERAL

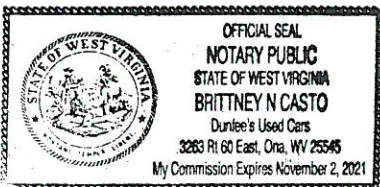
R. Stephen Jarrell  
Consumer Protection/Antitrust Division

Dated: 12/9/15

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 9th day of Dec, 2015.

My commission expires 11-2-2021.



Brittney N. Casto  
NOTARY PUBLIC